IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4597 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Petitioner(s)
Versus
HARIBHAI G VEGDA & 2 - Respondent(s)

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Appearance :
MS HANSA PUNANI AGP for Petitioner(s) : 1 - 2.
RULE SERVED for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

Date : 22/06/2006
ORAL JUDGMENT

This is a petition filed by the State of Gujarat and the Commissioner of Higher Education challenging the judgment and order dated 3.3.1994 of the Gujarat Secondary Education Tribunal in Application No.694 of 1993 wherein the Tribunal

declared that respondent No.1 herein (original applicant before the Tribunal) was entitled to Dearness Allowance (DA) on basic pay and the supervisory allowance. The Tribunal also directed the Department to continue to pay the original applicant DA on basic pay and supervisory allowance as per the prevailing practice. The Tribunal also quashed the orders of recovery, if any.

2. The original applicant (hereinafter referred to as the applicant), respondent No.1 herein, was initially appointed as a Teacher in respondent No.2-school, which is a secondary school receiving grant-in-aid from the State Government through the Director of Higher Education and the District Education Officer, Rajkot. The applicant was working as Supervisor w.e.f. 1.8.1988. He was being paid the basic pay plus supervisory allowance to the tune of Rs.50/-p.m.. The applicant was being paid DA on basic pay plus supervisory allowance. The school was also being paid grant-in-aid for the same. However, subsequently upon the Department raising an objection that DA was not payable on supervisory allowance, the school stopped paying DA on the supervisory allowance. The applicant thereupon moved the Gujarat Secondary Education Tribunal which allowed the application by the judgment and order dated 3.3.1994 in the terms indicated hereinabove. The Tribunal followed its judgment in Application Nos.155 and 156 of 1991 taking the view that Supervisors were entitled to get DA on basic pay and also on

supervisory allowance. For this purpose, the Tribunal had relied upon various Government resolutions and circulars such as Bombay State Government Circular dated 3.9.1958 clarifying that supervisory allowance was a part of the basic pay and also circulars dated 26.7.1983 and 13.2.1984 issued by the Education Department. It appears that the Department relied on the Circular dated 14.12.1987 of the Finance Department taking the view that DA should not be paid on the supervisory allowance. The Tribunal, however, took the view that the conditions of service prescribed by the Education Department were in favour of the Supervisors and that DA was being paid on supervisory allowance ever since 1958 and that the Government circulars dated 26.7.1983 and 13.2.1984 had also taken the same view and the Tribunal had also decided accordingly as per the judgment dated 28.1.1992 in Application Nos.155 and 156 of 1991.

3. Ms Hansa Punani, learned AGP appearing for the State authorities has submitted that as per the Government resolution dated 1.1.1987 the basic pay for the purpose of calculation of DA shall be as defined in Rule 9(39)(a)(i) of the Bombay Civil Services Rules, which reads as under:-

> “Pay means the amount drawn monthly by a Government servant as, -
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> (i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned

for post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre; and

(ii) overseas pay, technical pay, special pay, and personal pay, and

(iii)any other emoluments which, be specially classed as pay by Government.”

It is, therefore, submitted by the learned AGP that supervisory allowance cannot be considered as “pay” within the meaning of the aforesaid definition contained in Rule 9(39)(a) of the BCSR and, therefore, the Tribunal erred in allowing the application of the respondent herein.

4. Though served, none appears for the respondents herein.

5. In response to a query from the Court whether the Tribunal's judgment dated 28.1.1992 in Application Nos.155 and 156 of 1991 has been challenged before this Court, the learned AGP is not in a position to make any definite statement either way. The Court, therefore, proceeds on the basis that the view taken by the Tribunal in the aforesaid judgment dated 28.1.1992 has become final. Even on merits it appears that supervisory allowance is being paid to a Teacher appointed as Supervisor in a

secondary school and, therefore, though called allowance it is really speaking remuneration for the services rendered by the person as a Supervisor over and above the pay being paid to that person for rendering services as a Teacher. The supervisory allowance, therefore, cannot be treated as a special pay or pay granted in view of personal qualifications of the employee as contemplated by sub-clause (i) of clause (39)(a) of Rule 9 in the BCSR.

In any view of the matter, if another view were possible, the amount of supervisory allowance is only Rs.50/-p.m. which is a very small amount and, therefore, also the judgment of the Tribunal does not call for any interference.

6. In view of the above discussion, the Court does not find any fault with the judgment of the Tribunal and the petition accordingly deserves to be dismissed and the same is dismissed.

Rule is discharged.

(M.S. SHAH, J.)

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